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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL  
Chairman

Arizona Corporation Commission

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JIM IRVIN  
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MARC SPITZER  
Commissioner

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IN THE MATTER OF ARIZONA PUBLIC  
SERVICE COMPANY'S REQUEST FOR A  
VARIANCE OF CERTAIN REQUIREMENTS  
OF A.A.C. R14-2-1606

DOCKET NO. E-01345A-01-0822

**ARIZONA PUBLIC SERVICE  
COMPANY'S OPPOSITION TO  
THE APPLICATION TO  
INTERVENE OF THE  
ARIZONA TRANSMISSION  
DEPENDENT UTILITY GROUP**

Arizona Public Service Company ("APS") hereby submits its Opposition to the November 27, 2001 Application to Intervene filed by the Arizona Transmission Dependent Utility Group ("ATDUG") in the above-captioned matter. For the reasons stated below, ATDUG has failed to assert a sufficient interest in this proceeding to warrant intervention without unduly broadening the issues presented. Accordingly, APS requests that the Chief Administrative Law Judge deny ATDUG intervention in this proceeding.

In its application, the ATDUG requests intervention pursuant to A.A.C. R14-3-105. That rule, however, specifically restricts the right of intervention to parties that are "*directly and substantially affected* by the proceedings." (Emphasis added). Traditionally, this has meant retail customers or their representatives of the affected utility, investors, competitors and those agencies entitled by law (e.g., RUCO) to intervene. Moreover, that rule does not permit intervention when doing so would

1 unduly broaden the issues theretofore presented. As is apparent from their application,  
2 ATDUG fails both of these tests.

3 ATDUG is essentially a conglomeration of public power entities, including  
4 water conservation districts, irrigation districts, and electrical districts. They provide  
5 retail electrical service to certain customers—primarily agricultural and irrigation  
6 pumping customers—within their district boundaries pursuant to their respective  
7 enabling acts. Moreover, ATDUG's individual members are neither "Public Power  
8 Entities" as defined in Arizona House Bill 2663 ("Electric Competition Act") nor are  
9 they subject to the Commission's jurisdiction or the Electric Competition Rules,  
10 A.A.C. R14-2-1601, *et seq.* None are certificated Electric Service Providers. By  
11 definition, none of ATDUG's members own generation or provide (or are even in a  
12 position to provide) wholesale power to APS. They are not retail customers of APS, or  
13 investors in APS. Finally, they clearly have no statutory right to intervention.

14 Some of ATDUG's members, at best, are wholesale power customers of APS or  
15 obtain federally-regulated transmission service from APS. Because its members own  
16 no generation, ATDUG's members do not and cannot sell wholesale power to APS.  
17 The filing in this proceeding requests a variance to one provision of the Commission's  
18 retail competition rules regarding how APS will provide generation service to its retail  
19 customers. None of the federally-regulated or wholesale contracts between ATDUG  
20 and APS can thus be affected at all by APS' request, let alone "directly and  
21 substantially" affected.

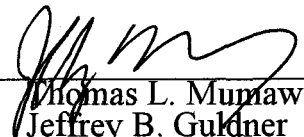
22 Similarly, although there was discussion at the December 5, 2001 procedural  
23 conference as to whether issues in this proceeding could or should be broadened to  
24 include more than the consideration of the variance request, the Commission has not  
25 ordered this proceeding so broadened. Thus, at this time, the issues presented are not  
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as all-encompassing as ATDUG's application suggests. However, even if all of the Electric Competition Rules were implicated by APS' filing, none of those Rules affect ATDUG or its members. Allowing the intervention of ATDUG, which has no direct or substantial connection to APS's requested relief, will therefore unduly broaden the issues before the Commission. Accordingly, ATGUD's application does not satisfy the facial requirements of A.A.C. R14-2-105(B).<sup>1</sup>

Based on the foregoing, APS respectfully requests that the Chief Administrative Law Judge deny ATDUG's application for leave to intervene in the above-captioned proceeding.

RESPECTFULLY SUBMITTED this 6th day of December, 2001.

SNELL & WILMER L.L.P.

  
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<sup>1</sup> If the issues presented in this proceeding change at some future point to somehow impact ATDUG, it may at that time seek to renew its request to intervene consistent with the requirements of A.A.C. R14-2-105(B).

1 Original and 10 copies of the foregoing  
2 filed this 6<sup>th</sup> day of December, 2001,  
3 with:

4 Docket Control  
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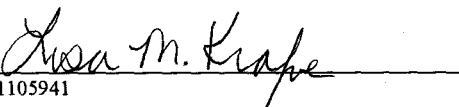
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